

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Application No. 42/2 of 1969 under section 33A of the Industrial Disputes Act, 1947.

between

SHRI D.C. PUNJ, WORKMAN AND THE MANAGEMENT OF M/S GOODYEAR INDIA,
LTD., BALLABGARH

Present :—

Shri Khushinder Singh, for the workman.

Shri Brij Bans Kishore with Shri K.P. Aggarwal, for the management.

AWARD

This is a complaint under section 33A of the Industrial Disputes Act, 1947, filed by Shri D.C. Punj an ex-employee of M/s Goodyear India, Ltd., Ballabgarh. It is alleged that the complainant joined the service of the respondent concern in the year 1961 as a workman at an hourly wage rate of 55 paise per hour. It is further alleged that the complainant was an active worker of the union and on 27th March, 1968 he was declared as a protected workman by the Good year Employees Union Regd, Ballabgarh and was duly recognised as such by the management but his services were wrongly terminated on 20th December, 1968 although an industrial dispute was then pending between the workman and the management of the respondent concern in this Tribunal which was registered as Reference No. 42 of 1968. It is alleged that the management had failed to obtain the express permission of the Tribunal under section 33 of the Industrial Disputes Act before terminating the services of the complainant and this action of the management was wrong, illegal and contrary to the provisions of law. It is, therefore, prayed that the order of the management terminating the services of the complainant be quashed.

Notice of this application was given to the management of M/s Goodyear India, Ltd., Ballabgarh and they have filed a written reply. It is pleaded that the present complaint under section 33A of the Industrial Disputes Act is not in the prescribed form because it has not been filed in triplicate in form (I) as laid down by the rule. It is further pleaded that sub-rules 59(2) and (3) of rules 59 of the Industrial Disputes (Punjab) Rule, 1958 lay down that the complaint should be verified by the workman concerned and the person verifying it should specify by reference to the numbered paragraphs of the complaint what he verifies from his own knowledge and what he verifies upon information received and believed to be true, and these sub-rules have also not been complied with. The complaint is also said to be defective because it does not indicate the place at which it was signed. On merits it is pleaded that on 2nd January, 1962 the complainant Shri D.C. Punj was promoted as Salaried Shift Supervisor and on 1st June, 1964 he was further promoted as a Shift Foreman. It is pleaded that on 20th December, 1968 when the services of the complainant were terminated he was holding the status of a fullfledged Foreman drawing a salary of Rs 655 P.M. and therefore he could not be treated as a workman as defined under Section 2 (s) of the Industrial Disputes Act and so the question of declaring him as a protected workman or recognising him as such did not arise. The termination of his services is therefore said to be legal.

In order to meet the preliminary objections raised on behalf of the management that the complainant was not in the prescribed form and was not duly verified as required by the rules, the workman filed a fresh application in the prescribed form against which the management have also filed their objection. The pleadings of the parties gave rise to the following issues :—

1. Whether the present application is competent in view of the previous application under section 33A which is still pending ?
2. Whether the present application can not be entertained because the applicant has not proved the contravention of section 33 of the Industrial Disputes Act ?
3. Whether the applicant is a workman within the meaning of clause(s) of section 2 of the Industrial Disputes Act ?

After the evidence of the parties had been recorded and the arguments heard, it was found that the complainant had pleaded that he was a protected workman and the management had denied this fact but no issue to cover this point had been framed. Accordingly the following additional issue was framed,—*vide* order dated 6th January, 1970.

4. Whether the complainant Shri D.C. Punj was protected workman?

Further opportunity was given to the parties to produce their evidence. The further evidence produced by the parties has been recorded and I have heard their learned representatives. My findings are as under :—

Issue No. 1.—The learned representative of the management did not advance any arguments on this issue. Obviously the right of the workman to get his case tried on merits can not be defeated simply because the first application filed by him was not on the prescribed form or was not duly verified as required by the rules. In view of the fresh application filed by the workman in order to meet the technical objections raised on behalf of the management, the first application can be treated as withdrawn and rejected and the fresh application which is in the prescribed form and duly verified must be tried on merits. I, therefore, find this issue in favour of the workman.

Issue No. 2.—The case of the complainant is that he was a protected workman and the provisions of section 33 have been contravened in as much as the management have terminated his services without prior permission of this Tribunal. The learned representative of the management conceded that if the complainant is held to be a protected workman then the present complaint would be competent. This position is correct. I find this issue accordingly.

Issue No. 3.—The main point raised on behalf of the management is that the complainant Shri D.C. Punj was employed in a Supervisory capacity and was drawing wages exceeding Rs 500 P.M. at the time his services were terminated, and therefore he could not be termed as a workman as defined in clause (s) of Section 2 of the Industrial Disputes Act 1947. The definition of workman as given in clause (s) is as under :—

“Workman” means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person :—

- (i) who is subject to the Army Act, 1950, or the Air Forces Act, 1950 or the Navy (Discipline) Act, 1934 ; or
- (ii) who is employed in the police service or as an officer or other employee of a prison ; or
- (iii) who is employed mainly in managerial or administrative capacity ; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature”.

It is submitted on behalf of the management that the case of the complainant falls under sub-clause (iv) of clause (s) as reproduced above and so he could not be considered to be a workman. According to management the complainant has been working as a Shift Foreman from 16th July, 1965 onwards and his basic salary was Rs 655 per mensem. The management have filed a chart showing how the production in the factory is controlled by the Supervisory staff. According to the chart the Production Superintendent is the Head and he is assisted by two Divisional Foremen who have under them Shift Foremen. The Shift Foremen have Shift Supervisors under them and Shift Supervisors control the workmen. Shri L.E. Schlosser, Personnel Manager of the respondent concern has appeared as witness and has been examined as M.W. 1. He has proved the wage slips Exhibit M.W. 1/1 to Exhibit M.W. 1/3 which show that the basic salary of the complainant in the months of September, 1968 to November, 1968 was Rs 655 per mensem. Exhibit M.W. 1/4 which is a copy of the Factory General Letter dated 1st October, 1963 shows that the complainant Shri D.C. Punj along with Sarvshri K.L. Sehgal and J. Kasana were appointed as Supervisors in Department No. 43 and they were to work under the Shift Foreman. Exhibit M.W. 1/5 to Exhibit M.W. 1/7 are also copies of the Factory General Letters. Exhibit M.W. 1/6 shows that Shri D.C. Punj replaced Shri Naginhal Singh as Shift Foreman with effect from 1st June, 1964. Exhibit M.W. 1/7 shows that Shri D.C. Punj, along with Sarvshri D.R. Tyagi and P.S. Chopra were Shift Foremen in Division A. The original application of the complainant Exhibit M.W. 1/8 has been filed. It bears the signatures of the complainant in which he has styled himself as Supervisor of Department No. 43. Individual Performance Appraisal and Review Forms marked Exhibit M.W. 1/9 to Exhibit M.W. 1/13 have been filed. In Exhibit M.W. 1/9 the complainant has been designated as Supervisor and his performance has been appraised by Shri J. Zemla. In Exhibit M.W. 1/10 the complainant has been designated as Salaried Shift Foreman and his work has been appraised by Shri W. Miller. In Exhibit M.W. 1/11 the complainant is designated as Shift Foreman of Division A and his performance has been appraised by Shri S.S. Malia. The form Exhibit M.W. 1/12 relates to Shri Govind Shenoy Salaried Supervisor and his performance has been appraised by the complainant Shri D.C. Punj. The form Exhibit M.W. 1/13 relates to Shri K.L. Sehgal another Salaried Supervisor and his performance has also been appraised by the complainant. Exhibit M.W. 1/14 details major job responsibilities of the complainant in his capacity as Shift Foreman of Division A. The witness has also proved the leave request forms Exhibit M.W. 1/15 to Exhibit M.W. 1/17 which have been recommended by the complainant in his capacity as Supervisor.

The complainant has not seriously challenged the correctness of the above documentary evidence. In his evidence the complainant has simply stated that he was employed in the respondent concern as a workman in June, 1961 and he had never previously worked in any Rubber Factory and he took his training from Mr. Snidr (Labour Trainer). The complainant says that even after promotion as a foreman his job was to train the workmen, fill the time sheets and check the charts and that he had to work with his own hands in order to train the workmen. It is thus proved even by the evidence of the complainant himself that after his promotion as a Foreman his primary job was not to do the work himself and his job was to supervise the work of other workmen and thus he was in every sense a Foreman doing supervisory duty and since his salary was more than Rs 500 per month, his case clearly fell under sub-clause (iv) of clause (s) of Section 2 of the Industrial Disputes Act and therefore it cannot be said that he fell within the definition of a workman so long as he continued to work as a Foreman.

It is however in the evidence of the management themselves that the complainant was working on a special assignment in December, 1968 when his services were terminated. Shri L.E. Schlosser M.W. 1 says that special assignment of the complainant was to check the machine charts, time sheets, pay rolls rackets against piece workers operators and to check the miss booking of piece work earnings. Shri Schlosser says that the complainant was required to co-ordinate his findings with production, time keepers, pay rolls and the production Director although he continued to be designated as a Foreman. The learned representative of the management vehemently argued that the complainant did not revert to the category of workmen simply because he was given special assignment because he continued to be designated as a Foreman and his salary was more than Rs 500. I am afraid it is not possible to accept this contention. In order to determine whether an employee is performing a supervisory job, we have to examine the actual nature of the work performed by him and we have not to see to the mere paper designation. I have discussed in detail the nature of the work which was being done by the complainant during the time he was actually performing the duty of the Foreman and have come to the conclusion that he was then performing supervisory duty. The details of the work which was required to be done by the complainant when he was put on the special assignment clearly show that the complainant was no longer required to perform any supervisory duty. He had no workman working under him whose work he was required to supervise. The special assignment of the complainant simply required him to check the machine charts, time sheets, pay rolls etc. I am, therefore, clearly of the view that the complainant cannot be said to be performing any supervisory duty when he was given the special assignment and that he fell within the definition of the workman when he was given the special assignment although his salary then was more than Rs 500 per mensem. I, therefore, find this issue in favour of the workman.

Issue No. 4.—It is submitted on behalf of the management that the complainant could not be regarded as a protected workman because the Goodyear Employees Union of which the complainant claims to be an office bearer is not a union recognised by the management and secondly under sub-rule (2) of Rule 61 of the Industrial Disputes (Punjab) Rules, 1958, it is the prerogative of the management to communicate their acceptance of the names of the employees who are to be treated as protected workmen and Shri Punj has not been recognised as such by the management. In my opinion under the circumstances of this case there is no force in any of these submissions. The complainant Shri Punj is the Senior Vice President of the Goodyear Employees Union and the President of the union,—vide his letter dated 27th March, 1968, copy marked Exhibit W.W. 4/3 informed the Registrar of Trade Unions that Shri Punj along with other officer bearers whose names were mentioned in serial Nos. 1 to 7 of the letter in question be treated as protected workmen. A copy of this letter was also sent to the management as also to the Labour Commissioner, Conciliation Officer and the Labour Inspector. The management never informed the union that they had any objection against accepting Shri Punj or any other office bearer of the union as a protected workman.

The management in the written statement have pleaded that Shri Punj did not fall within the definition of a workmen given in clause(s) of section 2 of the Industrial Disputes Act and so the question of accepting him as a protected workman did not arise. The objection that the Goodyear Employees Union was not recognised by the management and therefore no office bearer of this union could be treated as a protected workman was never taken in the written statement. The learned representative of the management has also not cited any rule or authority in support of the proposition that before any workman can be treated as a protected workman he must be a member of a union which is recognised by the management and if it does not please them to recognise the union then no member of that union can claim to be treated as a protected workman. I am therefore of the opinion that there is no force in the objection that Shri Punj cannot be treated as a protected workman because the Goodyear Employees Union has not been recognised by the management.

As regards the objection that Shri Punj could not be regarded as a protected workman because the management did not communicate their acceptance of the names recommended by the union who were to be treated as protected workmen, I am of the opinion that the management can not deprive the members of the union the privilege conferred on the protected workmen by simply sleeping over the matter.

Rule 61 of the Industrial Disputes (Punjab) Rules, 1958 lays down the procedure with regard to the protected workmen. The provisions of Rule 61 are as under :—

- (1) Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer, before the 30th September, every year, the name

and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union, should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

- (2) The employer shall, subject to section 33, sub-section (4) recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union, in writing within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen.
- (3) Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen, admissible for the establishment, under section 33, sub-section (4) the employer shall recognise as protected workmen only such maximum number of workmen.

Provided that where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised "protected workmen" in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen allotted to it :

Provided further that where the number of protected workmen allotted to a union under this sub-rule falls short of the number of officers of the unions seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

- (4) When a dispute arises between an employer and any registered trade union whether a particular workman should be recognised as a protected workman or not the dispute shall be referred to the Conciliation Officer concerned for decision. An appeal against the decision of the Conciliation Officer shall lie to the Labour Commissioner, Punjab, whose decision thereon shall be final.

It is true that under sub-rule (2) it is for the employer to communicate to the union in writing within 15 days of the receipt of the names and addresses of the workmen who are to be recognised as protected workmen, but the question for determination is what is the effect if the employees fails to perform this statutory duty which is cast upon him by the rules. Sub Rule (4) deals with the contingency where a dispute arises between the employer and any registered union on the question whether a particular workman should or should not be recognised as a protected workman. This sub-rule provides that where there is such a dispute it shall be referred to the Conciliation Officer concerned for decision. There is also a provision for an appeal against the decision of the Conciliation Officer to the Labour Commissioner and it has been laid down that the decision of the Labour Commissioner in the matter would be final. Thus we see that the management have not been given an absolute right to reject out-right the name of any workman who are to be treated as a protected workmen. In case the management have any objection against any workman who is to be treated as a protected workman they are expected to give their reasons for the same and if the union does not accept the objection of the management then the decision rests with the Conciliation Officer and if any party is not satisfied with the decision of the Conciliation Officer, it can appeal to the Labour Commissioner whose decision would be final. Thus a duty was cast upon the management to inform the union what objection they had against the inclusion of the name of Shri Punj as a protected workman and if the union was not satisfied with the reasons given by the management it could refer the dispute to the Conciliation Officer.

In this case the President of the Good year Employees Union Regd., Ballabgarh vide his letter dated 27th March, 1968 copy Ex. W.W. 4/3 addressed to the Registrar of Trade Union State of Haryana Chandigarh sent a list of the members of the Executive Committee of the union and Shri D.C. Punj whose name appears at serial No. 2 of the list was designated as Senior Vice-President and it is further mentioned that the workman whose name appeared from serial No. 1 to 7 are to be considered as protected members of the union. A copy of this letter was also sent to the management of Good year India Ltd., Ballabgarh. The management did not even bother to intimate to the union as to whether they did or did not accept the workmen whom the union desired to be treated as protected workman. The management simply wrote a letter copy Ex. W.W. 4/4 to the Registrar of the Trade Union intimating that the union is trying to include members of the management (i.e. non workmen) in their union/-office bearers group. In para No. 4 of this letter it is stated that Shri Punj is a Shift Foreman drawing salary exceeding Rs 500 P.M. and has been entrusted with managerial and administrative responsibilities and therefore he was not a workman as defined in clause (s) of Section 2 of the Industrial Disputes Act. The management know this position was not correct and Sh. Punj was a special assignment. A copy of this letter was sent to (1) the Labour Commissioner, Haryana, Chandigarh, (2) Conciliation Officer, Faridabad, (3) Labour Inspector, Faridabad. The Labour Commissioner, Haryana, in reply to the letter sent to him wrote to the management that under the Trade Unions Act and the regulations made thereunder, his department was not competent to interfere in the matter and if the management had any objection they could file an application before the Conciliation Officer

under Rule 61(4) of the Industrial Disputes (Punjab) Rules, 1958. The Labour Commissioner, Haryana, forwarded the copy of this letter to General Secretary of the Goodyear Employees Union, Ballabgarh. It appears that the management did not take any further action on receipt of the reply from the Labour Commissioner, Haryana and forgot all about this matter. Since the copy of the letter written by the management was not endorsed to the union by any body, the union had no means of knowing what objections the management had to the inclusion of the name of Shri D.C. Punj in the list of the protected workman and all that they came to know was that their Labour Commissioner had advised the management to file an objection against the inclusion of the name of Shri D.C. Punj in the list of the protected workman to the Conciliation Officer. In view of the omission of the management to take any further action in the matter as advised by the Labour Commissioner, the union could reasonably presume that the management did not wish to press their objections to the inclusion of the name of Shri D. C. Punj in the list of the names of the protected workman.

The President of Goodyear Employees Union has submitted that in the past also the management have never communicated in writing to the union the names of the workmen who were to be recognised as protected workmen and the list of the names submitted by the union was considered to be accepted because if the management had any objection, that objection was communicated to the union. The President has been examined as W.W.4 and has stated that in March, 1966 he was elected as President of the union and he sent a list of five workmen who were the office bearers of the union and the union desired than to be treated to protected workmen. The management did not intimate in writing their acceptance of these workmen as protected workmen but in fact they were treated as protected workmen by management because when they wanted to impose punishment on three workmen namely Sarvshri Khushinder Singh, (President), Y.P. Sahni, and S.M. Nanda out of these five protected workmen, an application was made for permission to take action against them. The President has stated that on 2nd September, 1966 another list of the office bearers of the union was given to the management and the management raised an objection against the inclusion of the names of the two office bearers. The Conciliation Officer called both the parties and the union agreed to withdraw the names of the two workmen against whom the objection had been raised. The President has further stated that thereafter they have been furnishing the list of the office bearers of the union to the management and they never raised any objection against the inclusion of the name of any office bearer, nor did they ever communicate in writing their acceptance of these names. This evidence of the President has not been questioned in cross examination and in view of the past practice of the management in not communicating in writing their acceptance of the names of the workmen who were to be treated as protected workmen, I am of the opinion that the submission of the complainant that the bonafide believed that the management have accepted him as a protected workmen is correct.

The learned representative of the management has argued that mere omission on the part of the management to object to the inclusion of any name in the list of the workmen would not automatically make him a protected workmen because sub-rule (2) of Rule 61 contemplates a positive act on the part of the employer that is to communicate to the union in writing the names and addresses of the workmen who are to be recognised as a protected workmen and therefore unless the employer communicates in writing his acceptance of the names of the workmen who are to be treated as protected workmen, the workmen concerned can not get any benefit which is conferred on the protected workmen. In support of this contention reliance has been placed upon a Authority cited as 1963-Supreme Court 1756. At page 1758 para 2 it has been observed by their Lordship of the Supreme Court that "the Labour Court has held that according to the rules framed by the Government of West Bengal as to the recognition of protected workmen there must be some positive action on the part of the employer in regard to the recognition of an employee as a protected workman before he could claim to be protected workmen for the purpose of section 33. Nothing has been shown to us against this view. In the absence therefore of any evidence as to the recognition, the Labour Court rightly held that the appellant was not a protected workman and therefore previous permission under section 33(3) of the Act would not be necessary before his dismissal".

I have carefully gone through the authority cited above and in my opinion this authority is distinguishable because in the instant case there is evidence that the past practice of the management has been not to communicate to the union in writing, their acceptance of the names of the workman who were to be recognised as protected workmen and in spite of this omission on their part they have been treating them as protected workmen.

Further the instant case is all the more strong because even in these proceedings the management have not alleged that they had any thing against the complainant on account of which they did not desire that he should be treated as a protected workman. The management were not prepared to accept him as protected workman because they wrongly thought that the complainant did not fall within the definition of a workmen as given in clause (s) of section 2 of the Industrial Disputes Act and for this reason he could not be treated as a protected workman. The question as to whether the complainant was or was not a workman has been discussed in detail under issue No. 3 and it has been held that he was a workman from the time he was put on special assignment. Shri L.E. Schlosser, Personnel Manager of the respondent concern admits in his evidence that he was transferred to Faridabad factory in April, 1968 and when he came to Faridabad the applicant that is Shri Punj was on special assignment. We have already seen that the union desired Shri Punj to be treated as a protected workman vide their letter dated 27th March, 1968 copy Ex. W.W. 4/3. Thus it is clear that at the time the union desired that Shri Punj be treated as a protected workman he was not working as a foreman but was on special assignment and he continued on this special assignment till his services were terminated on 20th December, 1968. The management also gave no opportunity to the complainant or to the union to contest the action of the management refusing to accept him as a protected workman. It was obligatory on the part of the management to inform the union whether they had accepted the list of the workmen who were to be recognised as protected

